

August 2, 2005

August Second

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The regular August Meeting of City Council was held on the above date at 7:00 p.m. in the Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: Ruby B. Archie, P. A. "Pete" Castiglione, Jr., E. Stokes Daniels, Jr., John C. Hamlin, Mayor, T. David Luther, T. Wayne Oakes, Sherman M. Saunders, and H. Phillip Smith (8). Vice-Mayor R. Wayne Williams, Jr. was absent (1).

Administrative Staff Members present were: City Manager Jerry L. Gwaltney, Deputy City Manager M. Lyle Lacy, III, Assistant City Manager for Utilities Joseph C. King, Finance Director Barbara A. Dameron, City Attorney W. Clarke Whitfield, Jr., and Clerk of the Council Annette Y. Crane, CMC.

Other Staff members present were Community Development Director Jerry Fischer, Planning Director Ken Gillie, and Deputy Public Works Director/City Engineer Kent Shelton.

Mayor Hamlin presided.

INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member David Luther offered the Invocation. The Pledge of Allegiance to the Flag followed.

MINUTES

Upon Motion by Council Member Daniels and second by Council Member Smith, Minutes of the July 19, 2005 Regular Meeting of Danville City Council and Minutes of the Regular Council Work Session held on July 19, 2005 were approved as presented. Draft copies had been distributed to Council Members prior to the Meeting.

BUDGET ADOPTION - FY 2005-2006 - COMMISSION OF THE ARTS GRANT

Upon Motion by Council Member Archie and second by Council Member Castiglione, Ordinance No. 2005-07.16 presented by its First Reading on July 19, 2005 amending the Fiscal Year 2005-2006 Budget Appropriation Ordinance to provide for a Virginia Commission for the Arts Grant in the amount of \$5,000 and to provide for the Local Share in the amount of \$5,000 for a total grant of \$10,000 was adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes,
Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

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APPOINT CHARLES ELLIS TO AIRPORT COMMISSION

Council Member Oakes moved the adoption of a Resolution entitled:

RESOLUTION NO. 2005-08.01

A RESOLUTION APPOINTING CHARLES G. ELLIS AS A MEMBER OF THE AIRPORT COMMISSION.

The Motion was seconded by Council Member Luther and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

REAPPOINT LUIS ABREU TO COMMISSION OF ARCHITECTURAL REVIEW

Council Member Oakes moved the adoption of a Resolution entitled:

RESOLUTION NO. 2005-08.02

A RESOLUTION REAPPOINTING LUIS ABREU AS A MEMBER OF THE COMMISSION OF ARCHITECTURAL REVIEW.

The Motion was seconded by Council Member Saunders and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

Mayor Hamlin, at the request of City Manager Gwaltney, asked that consideration of Sign Code Amendments to facilitate a Mural Program in Danville (Item IX-D) be removed from the Agenda for consideration at a future meeting. Mayor Hamlin said there were other matters under review relating to the program. City Manager Gwaltney said the matter would be placed on the next Council Work Session. By voice consent of all Council Members, the matter was removed from the Agenda.

HEARING-AMEND 2020 LAND USE MAP-GOODYEAR BOULEVARD & JENNY LANE

Mayor Hamlin opened the floor for a Public Hearing to consider amending the Year 2020 Land Use Map and to rezone property located at the Northwestern corner of Goodyear Boulevard and Jenny Lane. Notice of the Public Hearing had been duly published in the Danville Register and Bee on July 19 and 26, 2005.

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Phyllis Marshall, representing Marshall Rentals & Real Estate, appeared to answer questions from Council Members and citizens.

No one present desired to be heard and the Public Hearing was closed.

Council Member Castiglione moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.01

AN ORDINANCE AMENDING THE YEAR 2020 LAND USE MAP FROM ATTACHED AND MIXED RESIDENTIAL TO REGIONAL SERVICE AND TO REZONE FROM T-R THRESHOLD RESIDENTIAL TO "CONDITIONAL" HR-C HIGHWAY RETAIL COMMERCIAL DISTRICT APPROXIMATELY 9.98 ACRES OF A 64.4 ACRE TRACT AT THE NORTHWESTERN CORNER OF GOODYEAR BOULEVARD AND JENNY LANE.

The Motion was seconded by Council Member Oakes and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

HEARING-REZONE PROPERTY AT 1121 WEST MAIN STREET & VACANT PARCEL

Mayor Hamlin opened the floor for a Public Hearing to consider rezoning property located at 1121 West Main Street and a vacant parcel to the east. Notice of the Public Hearing had been duly published in the Danville Register and Bee on July 19 and 26, 2005. No one present desired to be heard and the Public Hearing was closed.

Council Member Daniels moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.02

AN ORDINANCE REZONING FROM N-C NEIGHBORHOOD COMMERCIAL DISTRICT AND HR-C HIGHWAY RETAIL COMMERCIAL DISTRICT TO "CONDITIONAL" HR-C HIGHWAY RETAIL COMMERCIAL DISTRICT, 1121 WEST MAIN STREET AND A VACANT PARCEL TO THE EAST.

The Motion was seconded by Council Member Smith and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

HEARING-SPECIAL USE PERMIT-DAY CARE CENTER - 218 HOLBROOK STREET

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Mayor Hamlin opened the floor for a Public Hearing to consider a request for a Special Use Permit to allow for the operation of a Child Day Care Center (Head Start) on property located at 218 Holbrook Street. Notice of the Public Hearing had been duly published in the Danville Register and Bee on July 19 and 26, 2005. No one present desired to be heard and the Public Hearing was closed.

Council Member Smith moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.03

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ALLOW FOR THE OPERATION OF A CHILD DAY CARE CENTER (HEAD START) IN ACCORDANCE WITH ARTICLE 3.E (C) (7) OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, AT 218 HOLBROOK AVENUE.

The Motion was seconded by Council Member Archie and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

HEARING-AMEND ARTICLE 10 SIGN REGULATIONS-ZONING CODE

Mayor Hamlin opened the floor for a Public Hearing to consider amending and reordaining certain sections of Article 10 Sign Regulations of the Zoning Code. Notice of the Public Hearing had been duly published in the Danville Register and Bee on July 19 and 26, 2005. No one present desired to be heard and the Public Hearing was closed.

Council Member Archie moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.04

AN ORDINANCE AMENDING AND REORDAINING CERTAIN SECTIONS OF ARTICLE 10 ENTITLED "SIGN REGULATIONS" OF CHAPTER 41 ENTITLED "ZONING ORDINANCE" OF THE DANVILLE CITY CODE TO CHANGE THE MINIMUM HEIGHT OF SIGNS OVER A VEHICULAR USE AREA, THE REUSE OF EXISTING SIGN SUPPORT POLES OR BRACKETS, NON-CONFORMING SIGNAGE, AND THE ALLOWANCE OF ADVERTISING ON DIRECTIONAL SIGNAGE.

The Motion was seconded by Council Member Daniels and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).

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ABSENT: Williams (1).

HEARING-VACATE PORTION UNOPENED RIGHT-OF-WAY-BEECHWOOD LANE

Mayor Hamlin opened the floor for a Public Hearing to consider a request to vacate and sell a portion of the unopened right-of-way at the end of Beechwood Lane. Notice of the Public Hearing had been duly published in the Danville Register and Bee on July 24 and 31, 2005. No one present desired to be heard and the Public Hearing was closed.

Council Member Wayne Oakes moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.05

AN ORDINANCE VACATING AND SELLING 0.083 ACRE OF THE SURPLUS RIGHT-OF-WAY LOCATED AT THE END OF BEECHWOOD LANE.

The Motion was seconded by Council Member Archie and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

BUDGET AMENDMENT-FY 2005-2006-TELECOMMUNICATIONS FUND

Upon Motion by Council Member Archie and second by Council Member Smith, an Ordinance entitled:

ORDINANCE NO. 2005-08.06

AN ORDINANCE AMENDING THE FISCAL YEAR 2005-2006 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A DECREASE IN THE ELECTRIC FUND OF \$570,350 AND BUDGET APPROPRIATION INCREASE IN THE TELECOMMUNICATIONS FUND OF \$1,421,032 FOR THE OPERATIONAL COSTS OF nDANVILLE

was presented by its First Reading, as required by City Charter, to lie over before final adoption.

SOUTHEASTERN POWER ADMINISTRATION CONTRACT APPROVAL

Council Member Smith moved the adoption of a Resolution entitled:

RESOLUTION NO. 2005-08.03

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED CONTRACT BETWEEN THE CITY OF DANVILLE, VIRGINIA AND THE SOUTHEASTER POWER ADMINISTRATION.

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The Motion was seconded by Council Member Oakes and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes,
Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

CODE AMENDMENT-CHAPTER 13-EROSION AND SEDIMENT CONTROL

Council Member Castiglione moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.07

AN ORDINANCE AMENDING AND REORDAINING CERTAIN SECTIONS OF CHAPTER 13 ENTITLED "EROSION AND SEDIMENT CONTROL" OF THE DANVILLE CITY CODE TO CONFORM AND BE CONSISTENT WITH THE CODE OF VIRGINIA.

Council Member Archie seconded by the Motion.

Council Member Daniels questioned the 5,000 square feet in the section of the Code relating to land-disturbing activity. He said the State Code stated 10,000 square feet and wondered why the City's requirements were stricter than the State's. City Engineer Kent Shelton said in the early 1980s when the Erosion and Sediment Control regulations were adopted, the City chose to use 5,000 feet. Mr. Shelton said it was felt at the time that in some case there may be certain conditions where more restrictive measures were needed. Mr. Daniels felt 10,000 feet was more appropriate in order to remain consistent with the State Code.

Mr. Daniels questioned the appeals process relating to the Erosion and Sediment Control section of the Code. Mr. Shelton advised appeals could be filed with the Director of Public Works, who is the administrator of the Erosion and Sediment Control regulations.

Mr. Daniels inquired of City Attorney Whitfield if the ordinance gave the Public Works Director the authority to make or change the law. Mr. Whitfield said the law allowed the Director to make exceptions on a case-by-case basis.

City Manager Gwaltney said he did not believe the 5,000 feet was inconsistent with State law. He said a locality could not make the law more lenient than the State law, but could make the requirements more restrictive. Mr. Gwaltney said he felt the 5,000 feet was in the Code for the City's protection.

Mr. Gwaltney said anyone who wished to do so could file an appeal with the City Manager's office and if the individual remained dissatisfied with the ruling had the option to appeal to City Council. He said it was a citizen's right to do so.

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Council Member Saunders asked if the language in the Code stated that an appeal was final if filed with the Director of Public Works. Mr. Saunders felt there should be a written procedure on the appeals process.

City Attorney Whitfield said the Code did not state the ruling of Public Works Director was final nor did it state an appeal could be made to Council.

Mayor Hamlin said he hoped it was understood that citizens of the community had the right to come before Council at any time with their concerns.

Mr. Whitfield cited Section 13.5 of the City Code in which the appeals process is detailed.

Council Member Smith felt the Code was acceptable as presented to Council.

The Ordinance was adopted by the following vote:

VOTE: 7-1
AYE: Archie, Castiglione, Hamlin, Luther, Oakes,
Saunders, and Smith (7).
NAY: Daniels (1).
ABSENT: Williams (1).

CODE AMENDMENT - CHAPTER 9 - STORM WATER MANAGEMENT POLICY

Council Member Castiglione moved the adoption of an Ordinance entitled:

ORDINANCE NO. 2005-08.08

AN ORDINANCE AMENDING AND REORDAINING CHAPTER 9 OF THE DANVILLE CITY CODE BY ADDING A NEW DIVISION TO ARTICLE V WITH RESPECT TO STORM WATER MANAGEMENT POLICY.

The Motion was seconded by Council Member Archie and adopted by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes,
Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

COMMUNICATIONS

City Manager Gwaltney said he had been working for some time with Adelphia Cable relating to the franchise agreement. Mr. Gwaltney said he had addressed concerns expressed by Council Members and

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citizen consumers of cable service with Adelphia officials to no avail. He said on several occasions he had asked for information the City had a right to ask for, repeatedly requested better service for the community, and repeatedly asked for justification as to why customers have to stand in all kinds of weather to pay their bills. Mr. Gwaltney said he informed Adelphia officials he would work with them to provide timely building renovations, but only about one-third of the renovations had taken place. He said in all his years of working with cable companies, Adelphia had been the most difficult to work with. Everyone has attempted to understand as Adelphia went through bankruptcy, but under the best of conditions and even as the company is sold, he said the City would have to deal with Adelphia for more than a year and a half.

Mr. Gwaltney said he had seen service disintegrate and advised that middle management supervisors and personnel were no longer in the City's office. He said there remains a tremendous lack in maintenance and a lack of cooperation with the City in attempting to move cable lines.

Mr. Gwaltney said he felt it was time to go public with the matter and said he may ask for a Resolution from City Council to let Adelphia know how serious the matter was. He said he would also seek someone from Adelphia to address City Council if the problems weren't soon resolved.

Council Member Castiglione said Danville Community College (DCC) was experiencing problems with Adelphia as well. He said service had been turned off at Camp Grove twice within the past month because Adelphia's billing system failed to record DCC's payments. He said the school continued to have problems with Adelphia.

In response to Council Member Daniels, Mr. Gwaltney said he felt Adelphia was violating the contract, particularly relating to the franchise agreement. He said the agreement provided for the City Manager to file a request for a combined government access and educational channel in order for citizens to be able to keep informed about both. Mr. Gwaltney informed Council that Adelphia said they did not have the quality time to give the City for the channel, but said he had received a letter from Adelphia in which officials stated they were adding three new channels in Danville. Mr. Gwaltney felt the company remained in non-compliance with the franchise agreement. He said at this point, he was asking for a meeting with Adelphia officials in an attempt to iron out some of the difficulties that presently exists.

Mayor Hamlin requested that Mr. Gwaltney keep Council Members informed of the situation.

There were no communications from the Deputy City Manager, City Attorney and City Clerk.

ROLL CALL

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Council Member Castiglione said the Dan River Angler's Association has requested the City Manager to look into the possibility of adding a boating ramp between the Union Street Bridge and the Camilla Williams Park area. Mr. Castiglione said emergency services personnel had also expressed interest in having easy access to the river.

Mr. Castiglione commended all involved in the National Night Out festivities that were held this evening at the Crossing.

Mr. Castiglione requested the City Manager and City Attorney take a look at the City's personnel ordinance to ensure that all items were in compliance with the Freedom of Information Act.

Council Member Daniels said he was receiving favorable feedback concerning proposed revisions to the City's animal ordinance. He asked Mr. Gwaltney to see how other communities deal with dog owners who walk their dogs and leave dog debris in neighbor's yards. Mr. Gwaltney said the information would be provided at the next Work Session.

Mayor Hamlin asked City Manager Gwaltney to convey to department directors his appreciation for their efforts in making this evening's National Night Out Festivities a great success.

Council Member Luther called attention to a flyer containing properties that will be auctioned off. One of the properties is being sold due to delinquent taxes and the City is selling others due to condemnation.

Council Member Saunders thanked the City's public safety personnel for the successful National Night Out.

Mr. Saunders reminded Council Members that since there was no salary increase this year for City employees, he had previously requested some type of incentive, such as an extra day off at Thanksgiving or something similar.

Council Member Smith reminded Council Members and City staff that he had requested a report on the June billing for Tangible Personal Property Tax collections during the July 19 Council Meeting. He reiterated that he felt it was important that Council look at collections for this year and compared with the last two or three years because Council Members needed to see how next year's budget would look.

CLOSED MEETING

At 8:12 P. M. Mayor Hamlin recognized Council Member Smith who moved that the meeting be recessed and that Council immediately convene in Closed Meeting for discussion or consideration of interview of prospective candidates for employment, assignment, appointment, promotion, performance, salaries, disciplining of

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specific public employees or appointees as permitted by Subsection (A) (1) of Section 2.2-3711 of the Code of Virginia, 1950, as amended, as more specifically to consider the Assistant City Attorney position. The Motion was seconded by Council Member Archie and carried by the following vote:

VOTE: 6-2
AYE: Archie, Castiglione, Daniels, Hamlin, Oakes, and Smith (6).
NAY: Luther, and Saunders (2).
ABSENT: Williams (1).

At 8:42 P.M. Council Member Smith moved that Council adopt the following Resolution.

CERTIFICATE OF CLOSED MEETING

WHEREAS, the Council convened in Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia, 1950, as amended, requires a Certification by the Council that such Closed Meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each Member's knowledge, (i) only public business matters lawfully exempted by the open requirements of Virginia Law were discussed in the Closed Meeting to which this Certification Resolution applies, and (ii) only such public business matters as were identified in the Motion convening the Closed Meeting were heard, discussed, or considered by the Council.

The Motion was seconded by Council Member Archie and carried by the following vote:

VOTE: 8-0
AYE: Archie, Castiglione, Daniels, Hamlin, Luther, Oakes, Saunders, and Smith (8).
NAY: None (0).
ABSENT: Williams (1).

The Meeting adjourned at 8:43 P.M.

MAYOR

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CLERK